

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

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6 **In the Matter of Charges and**) **Case No. 13-8552-1**
7 **Complaint Against**)
8 **STEVEN A. HOLPER, M.D.,**) **FILED**
9 **Respondent.**) **JUN - 7 2013**
10) **NEVADA STATE BOARD OF**
11) **MEDICAL EXAMINERS**
12) **By: _____**

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed at the time of filing the
15 formal Complaint of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
16 Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
17 its counsel, Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and
18 Steven A. Holper, M.D. (Respondent), by and through his counsel, L. Kristopher Rath, Esq., as
19 follows:

20 **WHEREAS**, on April 16, 2013, the Board's IC filed a formal Complaint in the
21 above-captioned matter charging Respondent with engaging in conduct that is grounds for
22 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the
23 Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), to wit: Count I: two
24 (2) counts of malpractice as defined by NAC 630.040, two (2) violations of NRS 630.301(4),
25 malpractice and Count II: five (5) counts of failure to maintain timely, legible, accurate and
26 complete medical records relating to the diagnosis, treatment and care of a patient, five (5)
27 violations of NRS 630.3062(1); and

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1 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,
2 understands it, and consulted with competent counsel, L. Kristopher Rath, Esq., concerning the
3 nature and significance of the formal Complaint. Respondent is fully advised concerning his
4 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed
5 if the Board finds and concludes that he violated one or more provisions of the
6 MPA; and

7 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
8 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA
9 and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to,
10 the right to a formal hearing on the charges against him, the right to representation by counsel in
11 the preparation and presentation of his defense, the right to confront and cross-examine the
12 witnesses against him, the right to written findings, conclusions and an order regarding a final
13 decision by the Board, and the right to judicial review of any final decision by the Board that is
14 adverse to him; and

15 **WHEREAS**, Respondent understands and agrees that this Settlement Agreement
16 (Agreement) is entered into by and between himself and the Board's IC, and not with the Board,
17 but that the IC will present this Agreement to the Board for consideration in open session at a
18 meeting duly noticed and scheduled. Respondent understands that the IC shall advocate approval
19 of this Agreement by the Board, but that the Board has the right to decide in its own discretion
20 whether or not to approve this Agreement; and

21 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
22 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
23 below shall be binding and enforceable upon him.

24 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
25 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
26 terms, covenants and conditions:

27 **1. Jurisdiction**. Respondent is, and at all times mentioned in the formal Complaint
28 filed in the above-captioned matter was licensed to practice medicine in the state of Nevada

1 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA,
2 and to impose sanctions as provided by the MPA.

3 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**

4 Respondent is represented by above-identified counsel herein, whom Respondent
5 covenants and agrees is fully capable, competent and fully advised in these circumstances, and
6 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly,
7 and intelligently after full consultation with and upon advice of above-identified counsel.

8 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
9 and conditions contained herein, Respondent knowingly, willingly and intelligently, with the
10 advice of above-identified counsel, waives all rights in connection with this Agreement, and the
11 terms, covenants and conditions contained herein, and with the understanding that Respondent
12 knowingly, willingly and intelligently waives all rights arising under or pursuant to the
13 United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B,
14 and any other statutory rights that may be available to him or that may apply to him in connection
15 with the proceedings on the formal Complaint filed herein, the defense of said formal Complaint,
16 the adjudication of the charges in said formal Complaint, and the imposition of sanctions.

17 Respondent agrees that the matter of the formal Complaint herein may be settled and
18 resolved in accordance with this Agreement without a hearing or any further proceedings, and
19 without the right to judicial review.

20 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
21 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
22 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

23 **5. Consent to Entry of Order.** Respondent concedes only that the Board has
24 sufficient evidence to proceed with its formal Complaint against him, but does not concede or
25 admit to such allegations, which he expressly denies, and which, but for his desire to reach this
26 compromise, he would contest at the formal hearing of this matter. In order to resolve the matter of
27 these disciplinary proceedings pending against him without incurring any further costs and expense

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1 of providing a defense to the formal Complaint, Respondent hereby agrees¹ that the Board may
2 issue an order finding that Respondent engaged in conduct that is grounds for discipline pursuant
3 to the MPA, to wit: two (2) counts of malpractice as defined by NAC 630.040, two (2) violations
4 of NRS 630.301(4), malpractice, as set forth in Count I of the formal Complaint, and five (5)
5 counts of failure to maintain timely, legible, accurate and complete medical records relating to the
6 diagnosis, treatment and care of a patient, five (5) violations of NRS 630.3062(1), as set forth in
7 Count II of the formal Complaint.

8 For the aforementioned violations, Respondent shall:

9 a. Allow his license to be suspended, with said suspension stayed and
10 Respondent placed on probation for a period of twenty-four (24) months from the date of the
11 Board's acceptance, adoption and approval of this Agreement, with an obligation to comply with
12 the following terms and conditions:

13 (1) Respondent shall complete forty (40) hours of Continuing Medical
14 Education (CME), in person, regarding the subject of pain management.² The
15 aforementioned hours of CME shall be in addition to any CME requirements that
16 are regularly imposed upon Respondent as a condition of licensure in the state of
17 Nevada and shall be approved by Board prior to their completion;

18 (2) Respondent shall remain in compliance with all state and federal
19 laws pertaining to the practice of medicine and the prescribing, administering or
20 dispensing of any dangerous drug or controlled substance during his probation;

21 (3) Respondent shall obtain, if necessary, and maintain all appropriate
22 registrations and licenses with the DEA and the Nevada State Board of Pharmacy
23 to prescribe, administer or dispense any dangerous drugs or controlled substances
24 during his probation;

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26 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any
27 subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said
28 agreements and admissions by Respondent are not intended or made for any other use, such as in the context of
another state or federal government regulatory agency proceeding, state or federal civil or criminal proceeding, or any
other state or federal court proceeding, or any credentialing or privileges matter.

² Respondent shall receive credit for all CME hours in pain management that are completed in person after
January 31, 2013, and prior to the Board's acceptance, adoption and approval of this Agreement.

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(4) For the first six (6) months of Respondent's probation, the Board shall conduct ten (10) random medical record reviews per month. After the first six (6) months of Respondent's probation, the Board shall conduct ten (10) random medical record reviews every three (3) months for the remainder of Respondent's probation. Respondent shall bear all expenses related to the Board's random medical record reviews.

(5) Every month during Respondent's probation, the Board shall request Respondent's patient sign-in sheets from ten (10) random dates. Respondent shall provide the requested patient sign-in sheets to the Board within ten (10) business days of said request. Upon its review of the patient sign-in sheets, the Board may request the medical records for any patient designated on the patient sign-in sheets for that month. Respondent shall provide the Board with any requested medical records for any patient designated on the patient sign-in sheets for that month within ten (10) business days of the Board's request. If the Board requests the medical records for any patient designated on the patient sign-in sheets, the Board shall notify Respondent, in writing, at the time of its request whether the costs associated with the review of the requested medical records shall be paid in full by Respondent. If the costs of the review of the medical records shall be paid in full by Respondent, then the review shall count as one of the random reviews of medical records outlined in paragraph 5(a)(4);

(6) On successful completion of the probation requirements set forth herein, Respondent shall be removed from probation, his license to practice medicine in the state of Nevada shall be restored to good standing, and the suspension shall be rescinded. The Board shall issue an order to this effect when the circumstances warrant.

b. Respondent shall receive a public reprimand;

1 c. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
2 of \$7,500.00, the current amount of the costs incurred by the Board to investigate and prosecute
3 this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
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5 Board within twelve (12) months of the Board's acceptance, adoption and approval of this
6 Agreement; and

7 d. The terms of this Agreement shall be reported as required by law.

8 **6. Release From Liability.** In execution of this Agreement, the Respondent, for
9 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
10 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
11 employees in their representative capacities, and in their individual capacities, from any and all
12 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
13 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have
14 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
15 or by reason of this investigation, this Agreement or its administration.

16 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
17 recommend approval and adoption of the terms, covenants and conditions contained herein by the
18 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
19 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
20 communicate directly with the Board staff and the adjudicating members of the Board.

21 Respondent acknowledges that such contacts and communication may be made or
22 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
23 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
24 and communications may include, but not be limited to, matters concerning this Agreement, the
25 formal Complaint, and any and all information of every nature whatsoever related to the formal
26 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
27 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
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1 discussed, and if requested, respond to any questions that may be addressed to the IC or its
2 counsel.

3 **8. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
4 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
5 IC will cause the Board's order accepting, adopting and approving this Agreement to be entered
6 herein, ordering full compliance with the terms herein and ordering that this case be closed,
7 subject to the provisions in Paragraph 5.

8 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
9 accept, approve and adopt the terms, covenants and conditions set out in this Agreement, this
10 Agreement shall be null, void, and of no further force and effect except as to the following
11 covenant and agreement regarding disqualification of adjudicating Board panel members.
12 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
13 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
14 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
15 adjudicating panel of the Board from considering the charges against Respondent and
16 participating in the disciplinary proceeding in any role, including adjudication of the case.
17 Respondent further agrees that he shall not seek to disqualify any such member absent evidence of
18 bad faith.

19 **10. Binding Effect.** If this Agreement is approved by the Board, Respondent
20 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
21 and the Board's IC which contract may be enforced in a court or tribunal having jurisdiction.
22 Further, this Agreement shall inure to the benefit of and be binding upon each of the parties hereto
23 and their respective heirs, personal representatives, assigns and successors in interest of each party
24 and shall resolve any and all matters, actions and investigations, including specifically, BME
25 investigative case numbers 09-11423, 09-11548, 09-11791, 10-11967, 10-12141, 10-12479, 11-
26 12868, 12-13744, 12-13927 and 12-14128, that were open and/or pending on or before
27 January 31, 2013. The above-listed open and/or pending investigations and matters shall be
28 deemed closed with no Board action and no admissions by Respondent.

1 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event
2 either party is required to seek enforcement of this Agreement in the district court, he consents to
3 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
4 Second Judicial District Court of the state of Nevada and for the county of Washoe.


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6 **12. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
7 action is commenced in the district court to enforce any provision of this Agreement, the
8 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

9 **13. Failure to Comply With Terms.** In the event the Board enters its order
10 approving, accepting and adopting this Agreement, should Respondent fail to comply with any
11 term or condition recited herein, the Board shall be authorized to immediately suspend
12 Respondent's license to practice medicine in the state of Nevada pending an order to show cause
13 hearing, which will be duly noticed and scheduled. Further, failure to comply with the terms
14 recited herein may result in additional disciplinary action being initiated against Respondent for a
15 violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure
16 of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement
17 may subject Respondent to civil collection efforts.

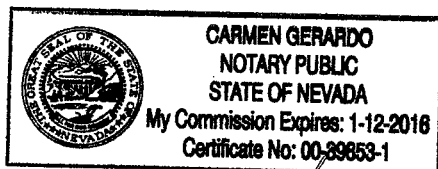
18 Dated this 16th day of May, 2013.

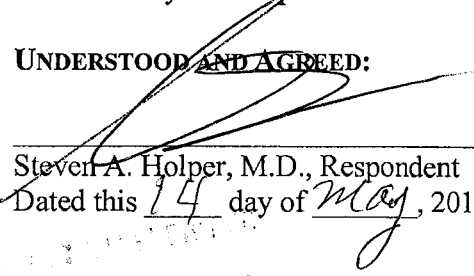
Dated this 15th day of May, 2013.

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20 By: 
21 Erin L. Albright, Esq.
22 Attorney for the Investigative Committee


By: 
L. Kristopher Rath, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:




Steven A. Holper, M.D., Respondent
Dated this 14 day of May, 2013.

1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted by the
2 Nevada State Board of Medical Examiners on the 7th day of June 2013, with the final total amount of
3 costs due of \$7,500.00.

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6 Benjamin J. Rodriguez, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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